

ORAL ARGUMENT SCHEDULED FOR FEBRUARY 1, 2019**IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT**

INCOMPAS,

Petitioner,

v.

FEDERAL COMMUNICATIONS
COMMISSION
and UNITED STATES OF AMERICA,
*Respondents.*Case No. 18-1051 (Lead)
and consolidated cases**OPPOSITION TO RESPONDENT'S MOTION TO
POSTPONE ORAL ARGUMENT**

Petitioner INCOMPAS respectfully opposes the motion to postpone oral argument filed by Respondent Federal Communications Commission ("FCC") on January 15, 2019 (Document #1768455). The motion should be denied, as denial will authorize Respondent to proceed with this case, which is set for oral argument on February 1, 2019.

The Antideficiency Act, 31 U.S.C. § 1342, prohibits counsel for the FCC and the United States from working on a voluntary basis unless "authorized by law." However, denial of the motion "would constitute express legal authorization for the activity to continue' within the meaning of § 1342."

Kornitzky Group, LLC v. Elwell, No. 18-1160, ___ F.3d ___, 2019 WL 138710, at *1 (D.C. Cir. Jan. 9, 2019).

Denial would be in line with this Court's precedent. During the 2013 governmental shutdown, this Court denied similar requests to stay oral argument. *Id.* ("For example, when federal appropriations lapsed in 2013, resulting in a 'shutdown' from October 1 to October 17, 2013, the court received Government motions to stay oral argument in at least sixteen cases. Every one of these motions was denied; and every time, the Government then participated in oral argument."). This Court has continued to deny motions to stay oral argument during this shutdown. *See People for the Ethical Treatment of Animals v. Department of Agriculture*, No. 18-5074, ___ F.3d ___, 2019 WL 180582 (D.C. Cir. Jan. 14, 2019).

Moreover, there is a need for a timely decision in this important matter. Due to the FCC's misguided and unlawful repeal of the network neutrality rules, consumers are at risk of substantial harm from Internet Service Providers ("ISPs"), which may now interfere with access to lawful Internet content without the restraint of the net neutrality rules. The repeal of the rules also threatens edge providers, as they are facing the risk of blocking, throttling, and other practices by ISPs, which may have services competing with edge provider services.

Finally, Petitioners have invested substantial resources and time in preparing for oral argument. Granting the extension would cause substantial disruption for Petitioners.

CONCLUSION

INCOMPAS respectfully requests that the motion to postpone oral argument be denied.

Dated: January 16, 2019

Respectfully submitted,

/s/ Markham C. Erickson

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 27(d)(2)(A), I certify that this opposition complies with the applicable type-volume limitations. This opposition was prepared using a proportionally spaced typeface using Microsoft Word in 14-point Times New Roman. This opposition contains 351 words. This certificate was prepared in reliance on the word-count function of the word-processing system used to prepare this opposition (Microsoft Word 2010).

/s/ Markham C. Erickson

Markham C. Erickson

January 16, 2019

CERTIFICATE OF SERVICE

I, Markham C. Erickson, hereby certify that on January 16, 2019, I caused the foregoing to be electronically filed with the Clerk of the Court for the United States Court of Appeals for the District of Columbia Circuit using the appellate CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

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